IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6538 OF 2005.

Vimalraj Kesharimal Doshi. ... Petitioner.

Versus.

The Municipal Corporation of City of Pune. ... Respondent.

Shri A.P.Vanarse for the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 20th February, 2007.

P.C.:

1. On 3rd October 2005, notice was issued for final disposal of the admission stage. Office noting shows that the Respondent is duly served. None appears for the Respondent. The Petitioner preferred an Appeal under section 406 of the Bombay Provincial Municipal Corporations Act, 1949. On 6th March 2000, the said Appeal was dismissed for default. On 1st January 2001 the Petitioner applied for restoration of the said Appeal. The said application was contested by the Respondent. By a Judgment and Order dated 6th August 2004, the learned Judge dismissed the Application for restoration and the Appeal preferred by the Petitioner against the said order to the District Court also came to be dismissed by judgment and order dated 8th July 2005. By this petition under Article 227 of the Constitution of India, the Petitioner is challenging the aforesaid two orders.

2. The learned Advocate for the Petitioner invited my attention to the averments made in the Application for restoration and pointed out that there was sufficient cause for the Petitioner to remain absent when the Appeal was placed before the Court. He submitted that a case for restoration was made out.

3. I have considered the submissions. The Appellate Court has noted that from the year 1995 till 28th December 2000, the Petitioner did not attend the Court. The Appeal Court found that the Advocate for the Petitioner had expired in 1996 and thereafter no steps were taken by the Petitioner.

4. I have perused the averments made in the Application for restoration. The Appeal was dismissed on 6th March 2000 and an Application for restoration was made on 1st January 2001. In my view, the Courts below ought to have restored the Appeal as the Petitioner deserves one more opportunity to prosecute the Appeal on merits. The Courts below could have compensated the Respondent by ordering payment of reasonable costs. Considering the facts and circumstances of the case the amount of costs is quantified at Rs.5000/-.

5. Hence the following order is passed:

i) The impugned Judgments and orders are quashed and set aside. Misc.Application No.84 of 2001 is allowed and the Municipal Appeal No.36 of 1995 is restored to file subject to condition of the Petitioner paying costs of Rs.5000/- to the Respondent-Corporation within a period of eight weeks from today. The deposit of the amount of costs with the trial Court within the stipulated period will be treated as sufficient compliance with this order.

ii) If costs are not paid or deposited by the Petitioner within the stipulated time, the order of dismissal will stand.

iii) Rule is partly absolute in the above terms.

Judge.